

IRIS LISA ROBINSON, FEBRUARY 17, 2009
CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

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1 Q. You have a specific recollection of --
2 A. That was my signature, yes.
3 Q. Did you have an assistant or secretary?
4 A. We did in Naperville.
5 Q. Did you give it to someone else to mail
6 out?
7 A. No. I would have.
8 Q. So you remember typing the envelope?
9 You have a specific recollection of doing that?
10 A. It would have been a window envelope.
11 Q. Okay. A window envelope?
12 A. Correct.
13 Q. Why would it have been a window
14 envelope?
15 A. Because it was the address printed right
16 here.
17 Q. And you remember putting the stamp on
18 it?
19 A. I don't have to do that. Just put it in
20 a bin.
21 Q. Put it in a bin. Okay.
22 Why did you fax this letter to Kurt
23 Beranek on May 6, 2005?
24 MR. DUNNE: Objection. I think it's been

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1 asked and answered.
2 Go ahead.
3 BY THE WITNESS:
4 A. Because VOA surprising -- that they said
5 they were going to be dismissed and not taking a
6 chance on VOA.
7 BY MS. SKAGGS:
8 Q. I don't understand how that's responsive
9 to my question.
10 A. To make sure that --
11 MR. DUNNE: Is there a question pending?
12 BY MS. SKAGGS:
13 Q. Can you explain your answer.
14 A. It was to make sure VOA would have a
15 copy of the letter.
16 Q. Okay. So in order to make sure that VOA
17 got a copy of the letter, you faxed it to Kurt
18 Beranek, your assigned defense counsel in this
19 matter?
20 A. Kurt was defending VOA, so he received a
21 fax of the letter, too.
22 Q. So you were faxing it to Kurt Beranek to
23 make sure that VOA got a copy of the letter; is
24 that your testimony?

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1 A. Yes, that's what's here.
2 Q. Okay. So rather than send it certified
3 mail or fax it to VOA, you decided to send it to
4 VOA's assigned defense counsel, Kurt Beranek,
5 correct?
6 A. We faxed it to Kurt, correct. Faxed it
7 and mailed it directly to VOA, the address.
8 Q. Is it typically your practice to send
9 ROR letters just in the mail?
10 MR. DUNNE: Objection to the form of the
11 question.
12 BY THE WITNESS:
13 A. I didn't do too many RORs.
14 BY MS. SKAGGS:
15 Q. The ones that you did, did you always
16 just mail them?
17 A. I couldn't recall all of them. I
18 couldn't recall. There weren't that many that I
19 can recall.
20 Q. Do you recall ever sending one via
21 certified mail?
22 A. No, I can't recall that either.
23 Q. Do you recall ever sending one via DHL?
24 A. No, I can't recall.

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1 Q. I don't know that we need to mark this,
2 but I'm going to show you -- maybe we'll mark it.
3 I don't know.
4 This is USF&G 01556. This came out of
5 USF&G's file and is apparently a confirmation of
6 receipt of a letter sent by Mr. Ken Hagedorn to VOA
7 on June 6, 2007. This apparently was tracking a
8 letter that Mr. Hagedorn sent at that time.
9 Had you ever done anything like this
10 when you were sending reservation of rights
11 letters?
12 A. I don't recall sending anything like
13 that.
14 Q. Were you ever instructed to do that?
15 A. I don't recall.
16 Q. The way that you were insuring that VOA
17 got a copy of the letter was to fax it to Mr. Kurt
18 Beranek, correct?
19 MR. DUNNE: Objection, asked and answered.
20 BY THE WITNESS:
21 A. That was part of my thinking of that,
22 yes.
23 BY MS. SKAGGS:
24 Q. Did you ever have a discussion of this

30 (Pages 114 to 117)

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1 letter with Mr. Beranek?
2 A. I don't think I had the file after this.
3 Q. You didn't have the file on May 4, 2005?
4 A. I don't remember anything after this
5 letter in dealing with this file, because they were
6 reassigning files constantly.
7 Q. So the answer as to whether or not you
8 ever had a conversation with Mr. Beranek about this
9 letter is "no"?
10 A. I don't recall any conversations with
11 him on this letter.
12 Q. Did Mr. Beranek ever call you and say,
13 "Hey, why are you sending me this letter?"
14 A. I don't recall.
15 Q. Do you typically send reservation of
16 rights letters to assigned defense counsel?
17 MR. DUNNE: Objection, form of the question.
18 BY THE WITNESS:
19 A. I don't recall.
20 BY MS. SKAGGS:
21 Q. I think we talked about this, but you
22 don't have any explanation for why it is that there
23 was no notation made in the file around May 4th
24 about sending out this reservation of rights

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1 letter, correct? Do you have any explanation for
2 that?
3 A. I have no explanation why.
4 Q. Do you have any explanation for why
5 there was no notation about sending the contracts
6 and/or the letter to Adam Lutz or Steve Heckman for
7 their review?
8 MR. DUNNE: Can you read that one back.
9 (WHEREUPON, the record was read
10 by the reporter as requested.)
11 BY THE WITNESS:
12 A. I don't recall why.
13 BY MS. SKAGGS:
14 Q. Okay. Would it be standard to send out
15 a letter without making a note in the claims log?
16 MR. DUNNE: Objection, asked and answered.
17 Object to the form of the question.
18 BY THE WITNESS:
19 A. I don't recall why it wasn't done.
20 BY MS. SKAGGS:
21 Q. Would that be standard procedure?
22 MR. DUNNE: Same objection.
23 BY THE WITNESS:
24 A. We try to enter the most important

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1 things.
2 BY MS. SKAGGS:
3 Q. A reservation of rights letter was
4 pretty important, though, right?
5 A. Correct.
6 Q. You may have answered this. Do you
7 remember physically walking the file over to the
8 Cassidy firm in November of 2004?
9 A. I don't recall. My notes had it in
10 there.
11 Q. Do you recall why Cassidy did not
12 defend VOA in this matter?
13 A. I don't recall why.
14 Q. Do you recall that they were counsel for
15 another party in the matter?
16 A. No, I don't recall.
17 Q. Did you ever have any conversations with
18 Kurt Beranek about claims for contribution against
19 some of the other parties in the action?
20 A. I don't recall that.
21 Q. Did you ever have a conversation with
22 him about a claim against School District 230?
23 A. We discussed this, the Madden case, and
24 230 is part of it.

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1 Q. Right. But did you ever discuss
2 specifically Beranek's decision to make the claim
3 for contribution against some of the other parties
4 in the action, including District 230?
5 A. I wouldn't direct his counsel.
6 Q. So you never had any conversations with
7 him about that?
8 A. I thought we were getting out on MSJ.
9 That was my recollection of this one.
10 Q. Did you ever make anyone at VOA aware
11 prior to May 2005 that USF&G had an ongoing
12 business relationship with Kurt Beranek?
13 MR. DUNNE: Objection, lacks foundation, calls
14 for speculation, form of the question.
15 Go ahead.
16 BY MS. SKAGGS:
17 Q. I'm just asking if you ever spoke to
18 anyone at VOA about that subject.
19 A. About Kurt's ongoing -- not that I can
20 recall.
21 Q. Did you ever obtain a written consent
22 from VOA to -- for USF&G to assign Kurt Beranek as
23 defense counsel in light of the ongoing business
24 relationship?

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1 MR. DUNNE: Objection, form of the question.
2 BY THE WITNESS:
3 A. Just when the reservation of rights
4 letter went out on May the 4th, and I don't know
5 who handled the file pretty much after that.
6 BY MS. SKAGGS:
7 Q. But you never had that conversation with
8 VOA or obtained that consent, correct?
9 A. Written consent? In this letter he
10 mentions 14 days that they had to choose.
11 Q. Prior to that purported letter.
12 A. I mentioned telling Jennifer to submit
13 this to her agent.
14 Q. Okay. So the answer is "no"?
15 A. That's all I remember, what I had
16 written there.
17 Q. Did you ever discuss this May 4, 2005,
18 Exhibit No. 9 with anyone from VOA?
19 A. I don't recall.
20 MS. SKAGGS: I'd like five minutes. I think I
21 might be done. We're very close. Thank you.
22 MR. DUNNE: Are you going to have any more,
23 Jim?
24 MR. NYESTE: Just a couple.

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1 Amy, can I ask them now.
2 MS. SKAGGS: Sure.
3 FURTHER EXAMINATION
4 BY MR. NYESTE:
5 Q. Ms. Robinson, do you know a Debbie
6 Dillon at St. Paul Travelers USF&G?
7 A. There were two Debbies.
8 Q. A Debbie Dillon and a Deborah Murano?
9 A. Right.
10 Q. Did you ever discuss the Madden claim
11 with either of those?
12 A. I don't recall.
13 Q. Did you ever discuss it with Fred Swift?
14 A. I remember Fred was a person with
15 oversight of some claims.
16 Q. And did you ever discuss this Madden
17 claim with Mr. Swift?
18 A. I don't recall.
19 Q. And how about a man by the name of
20 Robert Walker at St. Paul Travelers USF&G? Did you
21 ever discuss it with him?
22 A. I don't know who that is.
23 Q. How about with Ken Hagedorn?
24 A. I'm not sure. I might have heard his

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1 name before.
2 Q. Since you left the company, has anyone
3 gotten in touch with you and asked you, "Iris,
4 where is the reservation of rights letter?"
5 A. I've only had discussions with Rory
6 Dunne when he mentioned the case on appeal.
7 MR. NYESTE: I don't have anything else.
8 MR. DUNNE: Are you ready, Amy? I have just
9 one thing I want to clarify.
10 MS. SKAGGS: Okay.
11 MR. DUNNE: Go ahead.
12 MS. SKAGGS: Do you want to go last?
13 MR. DUNNE: Sure.
14 MS. SKAGGS: I'm ready, yeah.
15 FURTHER EXAMINATION
16 BY MS. SKAGGS:
17 Q. Did you ever have any conversations with
18 anyone from Schiff Hardin regarding the Madden
19 claim?
20 A. I don't recall anything.
21 Q. Okay. So your recollection is you don't
22 recall any conversations with anyone from Schiff
23 Hardin.
24 MS. SKAGGS: I think I'm done.

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1 EXAMINATION
2 BY MR. DUNNE:
3 Q. Iris, if you could, could you look at
4 Exhibit No. 3, and specifically Page 32,
5 Mr. Heckman's note of March 3, 2005. And you
6 recall Mr. Nyeste asked you some questions about
7 tendering to Liberty Insurance Company. Is it
8 possible that Mr. Heckman was following up on
9 possible tenders to other defendants to see if
10 there was insurance coverage?
11 A. That would be always with Steve, if
12 there's possibility of any other coverages or any
13 other policy out there.
14 Q. And what's the purpose of tendering to
15 other policies or other defendants?
16 A. If they have a portion of liability, so
17 what portion would they pay for the total claim.
18 MR. DUNNE: I have nothing further.
19 We'll reserve signature. Thank you.
20 FURTHER DEPONENT SAITH NOT.
21
22
23
24

32 (Pages 122 to 125)

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION
4 UNITED STATES FIDELITY)
5 AND GUARANTY COMPANY,)
6 Plaintiff,)
7 vs.) No. 08 C 862
8 VOA ASSOCIATES, INC.,)
9 LIBERTY INTERNATIONAL)
10 UNDERWRITERS, MICHAEL J.)
11 MADDEN and JEAN MADDEN,)
12 Defendants.)

13 I hereby certify that I have read the
14 foregoing transcript of my deposition given at the
15 time and place aforesaid, consisting of Pages 1 to
16 125, inclusive, and I do again subscribe and make
17 oath that the same is a true, correct and complete
18 transcript of my deposition so given as aforesaid,
19 and includes changes, if any, so made by me.

20
21 IRIS LISA ROBINSON
22 SUBSCRIBED AND SWORN TO before me
23 this day of , A.D. 2009.
24 Notary Public

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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF DUPAGE)
4 I, JEANETTE F. RUTZ, a Notary Public
5 within and for the County of DuPage, State of
6 Illinois, and a Certified Shorthand Reporter of
7 said state, do hereby certify:
8 That previous to the commencement of the
9 examination of the witness, the witness was duly
10 sworn to testify the whole truth concerning the
11 matters herein;
12 That the foregoing deposition transcript
13 was reported stenographically by me, was thereafter
14 reduced to typewriting under my personal direction
15 and constitutes a true record of the testimony
16 given and the proceedings had;
17 That the said deposition was taken
18 before me at the time and place specified;
19 That I am not a relative or employee or
20 attorney or counsel, nor a relative or employee of
21 such attorney or counsel for any of the parties
22 hereto, nor interested directly or indirectly in
23 the outcome of this action.
24 IN WITNESS WHEREOF, I do hereunto set my

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1 hand and affix my seal of office at Chicago,
2 Illinois, this 4th day of March, 2009.

3
4
5 Notary Public,
6 DuPage County, Illinois
7 My commission expires 12/01/10.
8
9 CSR Certificate No. 84-3809.

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1 INDEX
2 WITNESS EXAMINATION
3 IRIS LISA ROBINSON
4 By Mr. Nyeste 3, 123
5 By Ms. Skaggs 96, 124
6 By Mr. Dunne 125
7

8 EXHIBITS
9 NUMBER MARKED FOR ID
10 IRIS ROBINSON DEPOSITION EXHIBIT
11 No. 1 3
12 No. 2 3
13 No. 3 3
14 No. 4 3
15 No. 5 3
16 No. 6 3
17 No. 7 3
18 No. 8 3
19 No. 9 3
20 No. 10 3
21
22
23
24

33 (Pages 126 to 129)

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION
4

5 UNITED STATES FIDELITY)
6 AND GUARANTY COMPANY,)
7 Plaintiff,)
8 vs.) No. 08 C 862
9 VOA ASSOCIATES, INC.,)
10 LIBERTY INTERNATIONAL)
11 UNDERWRITERS, MICHAEL J.)
12 MADDEN and JEAN MADDEN,)
13 Defendants.)

14
15 March 17, 2009

16 5:48 p.m.
17

18 The deposition of IRIS LISA ROBINSON,
19 resumed pursuant to adjournment, taken before
20 JEANETTE F. RUTZ, a Notary Public within and for
21 the County of DuPage, State of Illinois, and a
22 Certified Shorthand Reporter of said state, on the
23 2nd Floor, 215 Shuman Boulevard, Naperville,
24 Illinois.

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1 PRESENT:
 2 KARBAL, COHEN, ECONOMOU, SILK & DUNNE, LLC,
 3 (200 South Michigan Avenue, 20th Floor,
 4 Chicago, Illinois 60604,
 5 312-431-3700), by:
 6 MR. RODERICK T. DUNNE,
 7 appeared on behalf of the Plaintiff;
 8
 9 SCHIFF HARDIN, LLP,
 10 (233 South Wacker Drive, Suite 6600,
 11 Chicago, Illinois 60606,
 12 312-258-5728), by:
 13 MS. AMY R. SKAGGS,
 14 appeared on behalf of Defendant
 15 VOA Associates, Inc.;
 16
 17 MR. JAMES T. NYESTE, ESQ.,
 18 (One North LaSalle Street, Suite 2100,
 19 Chicago, Illinois 60602,
 20 312-750-1814),
 21 appeared on behalf of Defendant
 22 Liberty International Underwriters.
 23 REPORTED BY: JEANETTE F. RUTZ, CSR, RPR,
 24 CSR CERTIFICATE NO. 84-3809.

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1 (WHEREUPON, the witness was duly
 2 sworn.)
 3 IRIS LISA ROBINSON,
 4 called as a witness herein, having been previously
 5 duly sworn and having testified, was examined and
 6 testified further as follows:
 7 FURTHER EXAMINATION
 8 BY MR. NYESTE:
 9 Q. Would you state your name again, please.
 10 A. Iris Robinson.
 11 Q. Ms. Robinson, my name is Jim Nyeste. I
 12 represent Liberty Insurance Underwriters.
 13 A. Okay.
 14 Q. And to my right is --
 15 MS. SKAGGS: Amy Skaggs, representing VOA
 16 Associates.
 17 THE WITNESS: All right.
 18 BY MR. NYESTE:
 19 Q. And you're represented again today by
 20 Rory Dunne, right?
 21 A. Yes.
 22 Q. And this is going to be a short
 23 supplemental deposition, no more than an hour, by
 24 agreement among everyone here --

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1 A. Okay.
 2 Q. -- and probably much less than that, to
 3 follow up on -- well, after our initial deposition
 4 session you called my office and left me a voice
 5 mail, right?
 6 A. Correct.
 7 Q. And you also sent me an e-mail, I
 8 believe?
 9 A. Correct.
 10 Q. Okay. And I deduced from the voice mail
 11 and the e-mail that you had some second thoughts
 12 about some of the things you testified to.
 13 A. Correct.
 14 MR. DUNNE: Objection to the form of the
 15 question.
 16 BY MR. NYESTE:
 17 Q. And this is going to focus on the
 18 reservation of rights letter. We're not going to
 19 cover all the other ground in the deposition, but
 20 we're going to focus on that -- the spring of 2005.
 21 There was a draft reservation of rights letter
 22 dated February 24th, I believe, 2005, and then
 23 there was another reservation of rights letter
 24 dated May 4, 2005. And those are, respectively,

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1 Exhibits 8 and 9 that we looked at the first time.
 2 Now, you had some second thoughts about
 3 whether these were sent out or the circumstances
 4 surrounding their preparation; is that right?
 5 MR. DUNNE: Objection to the form of the
 6 question, but go ahead.
 7 BY THE WITNESS:
 8 A. Yes, I had some concerns.
 9 BY MR. NYESTE:
 10 Q. All right. With respect to Exhibit 8,
 11 the reservation of rights letter dated February 24,
 12 2005, I believe it was your testimony in the first
 13 deposition that this one was not sent out to
 14 anyone?
 15 A. That, I can't recall, because I -- I
 16 can't recall that. I would have to look at the
 17 deposition to remember that part. Because I want
 18 to say this one did go out, but I want to make
 19 sure.
 20 Q. I knew I was taking a risk there by
 21 bringing up Exhibit 8.
 22 Let's fast forward a little,
 23 Ms. Robinson. I know Mr. Dunne is going to object
 24 to the form of this question, but what is it you

2 (Pages 131 to 134)

IRIS LISA ROBINSON, MARCH 17, 2009

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1 want to tell me?
 2 MR. DUNNE: I'll object to the form of the
 3 question just because you said I would.
 4 Go ahead.
 5 BY THE WITNESS:
 6 A. That May the 4th, I have definite
 7 recollection that the letter was faxed. It was
 8 faxed and it was mailed out. It did not go
 9 certified.
 10 BY MR. NYESTE:
 11 Q. The May 4th letter, Exhibit 9, right?
 12 A. Correct.
 13 Q. You're confident that it was faxed to
 14 whom?
 15 A. It was faxed to the attorney. Was it
 16 Kurt --
 17 Q. Beranek?
 18 A. Beranek. It was faxed to him. And that
 19 the letter -- more than likely, I did not let Steve
 20 Heckman or Adam Lutz review it. Because of the
 21 pressure, I sent it out. That's what I was saying
 22 in the e-mail.
 23 Q. You sent it out without them having
 24 reviewed it?

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1 A. Yes.
 2 Q. That's one of the things you wanted to
 3 clarify?
 4 A. That's what I wanted to clarify.
 5 Q. Okay. Now, you also mentioned just a
 6 minute ago that you believe that this Exhibit 9 was
 7 mailed. To whom?
 8 A. VOA would have had a copy and -- I'm
 9 sure VOA would have had a copy, and I would have
 10 thought my attorney should get a copy of it, too,
 11 or the attorney that we had, Kurt Beranek.
 12 Q. Okay. Well, I'll tell you that this
 13 copy of Exhibit 9, or this document, Exhibit 9,
 14 that has this fax header at the top that bears the
 15 number 9-1-312-782-4537, that's the fax number of
 16 Kurt Beranek.
 17 A. Okay.
 18 Q. So I would accept that this document,
 19 Exhibit 9, was faxed to Mr. Beranek's office. All
 20 right?
 21 A. Okay.
 22 Q. Do you have any note, any certified
 23 mailing receipt, any evidence of any sort that this
 24 May 4, 2005, reservation of rights letter was

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1 indeed mailed to VOA?
 2 MR. DUNNE: Objection, asked and answered.
 3 BY THE WITNESS:
 4 A. No certified.
 5 BY MR. NYESTE:
 6 Q. Any other evidence?
 7 MR. DUNNE: Objection to the form of the
 8 question.
 9 BY THE WITNESS:
 10 A. Pardon me?
 11 BY MR. NYESTE:
 12 Q. Do you have any other evidence --
 13 A. No.
 14 Q. -- that this was mailed to VOA?
 15 A. Just what you have here.
 16 Q. Do you have a specific memory of putting
 17 it in -- of taking it to a post office, perhaps?
 18 MR. DUNNE: Objection, asked and answered.
 19 BY MR. NYESTE:
 20 Q. Your answer is --
 21 A. No.
 22 Q. Do you have a specific memory of putting
 23 it in a mailbox on the street?
 24 MR. DUNNE: Objection, asked and answered.

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1 BY THE WITNESS:
 2 A. No.
 3 BY MR. NYESTE:
 4 Q. Do you have a specific memory of handing
 5 it to the postman at your home?
 6 A. No.
 7 Q. Do you have a specific memory of somehow
 8 putting this in the mail, one way or the other?
 9 MR. DUNNE: Objection, asked and answered.
 10 Go ahead.
 11 BY THE WITNESS:
 12 A. We had a bin at that time. It was
 13 located on top of a bookshelf or file cabinets
 14 where we would put the mail in.
 15 BY MR. NYESTE:
 16 Q. Okay. And where was this? In
 17 Naperville? In Chicago? Somewhere else?
 18 A. In Chicago.
 19 Q. So you believe you mailed this letter,
 20 the May 4, 2005, reservation of rights letter, from
 21 the St. Paul Travelers office in Chicago?
 22 A. Yes.
 23 Q. Is there anything that would confirm
 24 that for you or that would show that to me?

3 (Pages 135 to 138)

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1 MR. DUNNE: Objection, form of the question.
 2 BY THE WITNESS:
 3 A. No, I have nothing to show that to you.
 4 BY MR. NYESTE:
 5 Q. When you testified before in your first
 6 deposition session, I believe you were uncertain as
 7 to where you were in May of 2005; whether in the
 8 Chicago office, the Naperville office, or perhaps
 9 acting as an outside adjuster or investigator. Has
 10 your memory been refreshed since our first session?
 11 A. Yes.
 12 Q. Okay. Tell me where you were generally
 13 in May of 2005; where you were working, that is.
 14 A. It would have been at the Chicago office
 15 on LaSalle Street.
 16 Q. And what was it that has refreshed your
 17 recollection?
 18 A. It was getting the dates straight with
 19 my daughter and her marriage.
 20 Q. And the date of her marriage was when?
 21 A. It was April the 8th, '05.
 22 Q. Okay. So just about a month before this
 23 letter?
 24 A. Correct.

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1 Q. And where were you working as of
 2 April 8, 2005?
 3 A. In the Chicago branch office.
 4 Q. And a month later you are confident that
 5 you were still working in the Chicago office?
 6 A. Yes.
 7 Q. When did you begin working in the
 8 Naperville office?
 9 A. I didn't clarify that date yet. I'm
 10 sorry.
 11 Q. Was there a time in the spring of 2005
 12 when you weren't working in either the Chicago or
 13 Naperville office but instead were an outside
 14 investigator?
 15 A. I was outside. I was still considered
 16 an outside adjuster May of '05 and April '05. I
 17 was still doing outside work and inside, but mostly
 18 inside.
 19 Q. As of May 4, 2005, did you have a
 20 regular cubicle or an office at the Chicago office
 21 of St. Paul Travelers?
 22 A. Yes, I had a regular cubicle.
 23 Q. Did you have a computer?
 24 A. Yes.

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1 Q. I believe you were thinking at one point
 2 that this letter may have been on a diskette or a
 3 floppy --
 4 A. Correct.
 5 Q. -- and not on a computer hard drive.
 6 What is your thinking on that issue today?
 7 A. Yes. As an outside, I kept floppies so
 8 I could go back and forth with my letters.
 9 Q. Why did you need to have floppies when
 10 you were still working in the office? Why did you
 11 need to take them home with you?
 12 A. I saved quite a few letters over the
 13 years on a floppy.
 14 Q. Do you still have this letter on a
 15 floppy disk?
 16 A. I did not find the floppy disk.
 17 Q. Now, this letter was printed from -- let
 18 me back up.
 19 Do you believe this letter was printed
 20 from a floppy or printed from the hard drive of
 21 your computer in the office?
 22 MR. DUNNE: Objection, form of the question.
 23 BY THE WITNESS:
 24 A. I believe it was on a floppy.

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1 BY MR. NYESTE:
 2 Q. Would the hard drive of your computer in
 3 the Chicago office have had a file corresponding to
 4 this letter?
 5 A. It could have. I think those computers
 6 probably would be destroyed by now.
 7 MR. DUNNE: Iris, please don't speculate.
 8 BY MR. NYESTE:
 9 Q. Was it your practice to keep the
 10 principal file on the hard drive and only put
 11 copies or certain files on the floppies?
 12 MR. DUNNE: Objection to the form of the
 13 question.
 14 If you understand the question, you can
 15 answer it.
 16 BY THE WITNESS:
 17 A. I couldn't recall.
 18 BY MR. NYESTE:
 19 Q. What would determine whether the
 20 letter -- a letter or other document was on the
 21 floppy versus on the hard drive?
 22 A. Reservation of rights letters I would
 23 try to keep and compose on the floppy.
 24 Q. So you believe you put this letter

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1 addressed to VOA in a mailing bin on top of a file
 2 cabinet; is that right?
 3 A. Correct.
 4 Q. And then what was the ordinary practice
 5 of what would happen to the items in that bin?
 6 A. Usually, at a certain time one of the
 7 clerks or the assistants would come by and pick
 8 them up and take them out to be stamped and mailed
 9 out.
 10 Q. So you didn't have to do the stamping
 11 and the mailing? You would just put your outgoing
 12 mail in this bin and someone else in the office
 13 would take care of it?
 14 A. Correct.
 15 Q. But it would be all addressed and sealed
 16 when you put it in the bin?
 17 A. They're not even sealed. It would be
 18 just in an envelope, and they seal them and send
 19 them out.
 20 Q. Okay. Were you going into the office
 21 every day in May of 2005?
 22 A. Just about.
 23 Q. How about in April?
 24 A. Yes. Even if --

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1 MR. DUNNE: Wait for him to ask a question.
 2 BY MR. NYESTE:
 3 Q. And in March?
 4 A. Yes.
 5 Q. During March, April, May of 2005, did
 6 there come a point in time when you no longer had
 7 access to the electronic notes system?
 8 A. Those months again?
 9 Q. March, April, and May of 2005.
 10 A. I would have had access to the
 11 electronic notes.
 12 Q. Do you have any explanation as to why
 13 there is no entry in the electronic notes that this
 14 May 4, 2005, reservation of rights letter was sent
 15 out?
 16 MR. DUNNE: Objection, asked and answered.
 17 Go ahead.
 18 BY THE WITNESS:
 19 A. It should have been an entry.
 20 BY MR. NYESTE:
 21 Q. And if there is no entry, what would
 22 that indicate?
 23 MR. DUNNE: Objection to the form of the
 24 question, calls for speculation.

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1 BY THE WITNESS:
 2 A. There should have been an entry later on
 3 by either Steve or me.
 4 BY MR. NYESTE:
 5 Q. And if there wasn't, would that indicate
 6 that it wasn't sent; that the letter wasn't sent?
 7 MR. DUNNE: Objection, form of the question.
 8 BY THE WITNESS:
 9 A. Steve kept a tight diary. He was in
 10 every file, so there should have been a note from
 11 him.
 12 BY MR. NYESTE:
 13 Q. Do you recall Kurt Beranek ever calling
 14 you and requesting a copy of a reservation of
 15 rights letter?
 16 MR. DUNNE: Objection. This is getting beyond
 17 the scope of our agreement, but you can answer the
 18 question.
 19 BY THE WITNESS:
 20 A. No, I don't recall.
 21 FURTHER EXAMINATION
 22 BY MS. SKAGGS:
 23 Q. Ms. Robinson, your testimony today is
 24 that you recall mailing the May 2005 letter from

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1 the Chicago office, correct?
 2 A. Correct.
 3 Q. Okay. Now, in your voice mail to
 4 Mr. Nyeste, you had indicated that you were unclear
 5 as to which office you were in and you speculated
 6 that the letter must have been on a disk. Now, do
 7 you recall leaving that message in a voice mail?
 8 A. On the voice mail.
 9 Q. And you speculated it may have been on a
 10 disk because when you transferred from Chicago to
 11 Naperville, your computer was not transferred with
 12 you. Do you recall leaving that on the voice mail
 13 message?
 14 A. No, I don't remember that part.
 15 Q. Okay. If you were mailing this letter
 16 from the Chicago office, why were you saving it on
 17 a disk?
 18 A. I was saving most of my letters on disk,
 19 reservation of rights and other letters, also,
 20 doctors and different forms, the language, to keep
 21 the lingo the same.
 22 Q. And why were you doing that?
 23 A. Because I was outside/inside adjuster,
 24 also. So I had letters I had done at home. I

5 (Pages 143 to 146)

Page 147

1 would bring them into the office.

2 Q. So at the time that you left your
3 message on Mr. Nyeste's voice mail, just so that
4 I'm clear, you were speculating about whether or
5 not you had saved something on a floppy disk. Are
6 you now clear as to that recollection?

7 A. Yes, pretty much so, yes.

8 Q. So today you think that you had it on
9 disk and printed it off of a disk in Chicago?
10 That's what you think today?

11 MR. DUNNE: Objection to the form of the
12 question.

13 Go ahead.

14 BY THE WITNESS:

15 A. Yes.

16 BY MS. SKAGGS:

17 Q. Why isn't a copy of the May 2005
18 reservation of rights letter in USF&G's file?

19 MR. DUNNE: Objection, asked and answered,
20 calls for speculation. I think this is the fourth
21 or fifth time it's been asked, so I'm going to
22 instruct her not to answer.

23 MS. SKAGGS: I don't know if that question has
24 ever been asked, actually. Do you want my question

Page 148

1 read back?

2 MR. DUNNE: Sure.

3 Read back the question.

4 (WHEREUPON, the record was read
5 by the reporter as requested.)

6 BY THE WITNESS:

7 A. I didn't know it was not in their file.

8 BY MS. SKAGGS:

9 Q. Did you print it out and put it in the
10 file?

11 A. It would have been, yes.

12 Q. So your recollection is that you printed
13 out a copy of this letter and put it in USF&G's
14 file?

15 A. Yes.

16 Q. Okay. Did you do that at the same time
17 that you mailed it to VOA?

18 A. Yes, should have been.

19 Q. You have a specific recollection of
20 doing that, as well?

21 A. Yes.

22 Q. Was this the same day that you faxed it
23 to Kurt Beranek?

24 A. Yes.

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1 Q. Do you have a specific recollection of
2 faxing it to Kurt Beranek?

3 A. Yes.

4 Q. So is it your testimony that in May 2005
5 you were working both out of Chicago and Naperville
6 or you had not yet gone to Naperville?

7 A. I don't believe I had gone to Naperville
8 yet. I'm pretty sure.

9 MS. SKAGGS: Do you have anything else, Jim?
10 Go off the record.

11 (WHEREUPON, discussion was had
12 off the record.)

13 MS. SKAGGS: I don't have any more questions
14 at this time.

15 MR. NYESTE: I think we're done.

16 Rory, do you have any?

17 MR. DUNNE: Yeah.

18 FURTHER EXAMINATION

19 BY MR. DUNNE:

20 Q. Do you know whether Mr. Heckman knew
21 that you sent the reservation of rights letter out
22 in May of 2005?

23 A. I don't want to speculate.

24 Q. So you don't know whether or not he knew

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1 that you sent out the reservation of rights in May
2 of 2005?

3 A. I can't speculate. I don't know.

4 Q. Do you recall talking to Mr. Heckman in
5 or around May of 2005 advising him that you were
6 sending out the reservation of rights letter?

7 A. No, I don't recall.

8 Q. And if he wasn't aware that you sent out
9 the reservation of rights letter, there would be no
10 way for him to notate it in the file; isn't that
11 correct?

12 A. Correct.

13 MR. DUNNE: I have nothing further.

14 MR. NYESTE: We're done.

15 MS. REPORTER: Signature?

16 MR. NYESTE: Do you want to reserve or waive?

17 MR. DUNNE: I reserved on the other one, so
18 I'll reserve.

19 FURTHER DEPONENT SAITH NOT.

6 (Pages 147 to 150)

IRIS LISA ROBINSON, MARCH 17, 2009

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1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE NORTHERN DISTRICT OF ILLINOIS
 3 EASTERN DIVISION
 4 UNITED STATES FIDELITY)
 5 AND GUARANTY COMPANY,)
 6 Plaintiff,)
 7 vs.) No. 08 C 862
 8 VOA ASSOCIATES, INC.,)
 9 LIBERTY INTERNATIONAL)
 10 UNDERWRITERS, MICHAEL J.)
 11 MADDEN and JEAN MADDEN,)
 12 Defendants.)
 13 I hereby certify that I have read the
 14 foregoing transcript of my resumed deposition given
 15 at the time and place aforesaid, consisting of
 16 Pages 130 to 150, inclusive, and I do again
 17 subscribe and make oath that the same is a true,
 18 correct and complete transcript of my resumed
 19 deposition so given as aforesaid, and includes
 20 changes, if any, so made by me.
 21 IRIS LISA ROBINSON
 22 SUBSCRIBED AND SWORN TO before me
 23 this day of , A.D. 2009.
 24 Notary Public

Page 152

1 STATE OF ILLINOIS)
 2) SS:
 3 COUNTY OF DUPAGE)
 4 I, JEANETTE F. RUTZ, a Notary Public
 5 within and for the County of DuPage, State of
 6 Illinois, and a Certified Shorthand Reporter of
 7 said state, do hereby certify:
 8 That previous to the commencement of the
 9 examination of the witness, the witness was duly
 10 sworn to testify the whole truth concerning the
 11 matters herein;
 12 That the foregoing deposition transcript
 13 was reported stenographically by me, was thereafter
 14 reduced to typewriting under my personal direction
 15 and constitutes a true record of the testimony
 16 given and the proceedings had;
 17 That the said deposition was taken
 18 before me at the time and place specified;
 19 That I am not a relative or employee or
 20 attorney or counsel, nor a relative or employee of
 21 such attorney or counsel for any of the parties
 22 hereto, nor interested directly or indirectly in
 23 the outcome of this action.
 24 IN WITNESS WHEREOF, I do hereunto set my

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1 hand and affix my seal of office at Chicago,
 2 Illinois, this 20th day of March, 2009.
 3
 4
 5 Notary Public,
 6 DuPage County, Illinois
 7 My commission expires 12/01/10.
 8
 9 CSR Certificate No. 84-3809.
 10
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1 I N D E X
 2 WITNESS EXAMINATION
 3 IRIS LISA ROBINSON (resumed)
 4 By Mr. Nyeste 132
 5 By Ms. Skaggs 145
 6 By Mr. Dunne 149
 7
 8 E X H I B I T S
 9 NUMBER MARKED FOR ID
 10 NO EXHIBITS MARKED.
 11
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7 (Pages 151 to 154)

EXHIBIT 13

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HARMAN FEDICK & O'CONNOR

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STATE OF ILLINOIS

SS

COUNTY OF COOK

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

MICHAEL J. MADDEN and JEAN MADDEN,

Plaintiffs,

vs.

NO 03 L 000433

F.H. PASCHEN, S.N. NIELSON, INC.,
JACOBS FACILITIES, INC., CLIFFS AND
CABLES, LLC and VOA & ASSOCIATES,
SCHULER & SHOOK, INC.

Defendants.

PLAINTIFF'S FOURTH AMENDED COMPLAINT

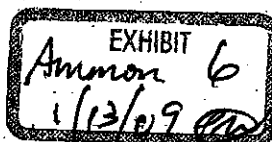
COUNT I

NEGLIGENCE-F.H. PASCHEN, S.N. NIELSON, INC.

NOW COMES the plaintiff, MICHAEL MADDEN, by his attorneys, HARMAN, FEDICK & O'CONNOR, LTD. and complaining of the defendant, F.H. PASCHEN, S.N. NIELSON, INC., (hereinafter referred to as "PASCHEN"), states as follows:

That on or about and before August 19, 2002, the defendant, PASCHEN, was a general contractor, who individually and by and through agents, servants and employees, owned and/or was in charge of the erection, construction, repairs, alteration, removal, and/or painting of a certain orchestra pit and/or hole in the stage located at Amos Alonzo Stagg High School District 230, 8015 West 111th Street, in the City of Palos Hills, County of Cook, and State of Illinois.

2. That on or about August 19, 2002, plaintiff, MICHAEL MADDEN, was an employee of Amos Alonzo Stagg High School District 230 and was engaged in the performance of his duties at or near a



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HARMAN FEDICK & O'CONNOR

portion of the aforementioned certain orchestra pit and/or hole

3. That at the aforementioned time and place, there was in force and effect a contract between the defendant, PASCHEN, and Amos Alonzo Stagg High School District 238.

4 That at the aforesaid time and place and prior thereto, the defendant, individually and through his agents, servants employees, was present during the course of such erection, construction, repairs, alteration, removal, and/or painting. Further, the defendant, individually and through agents, servants and employees, participated in coordinating the work being done and designated various work methods, maintained and check work progress and participated in the scheduling of the work and the inspection of the work, and were likewise responsible for the work being performed pursuant to Section 1926.16 of the Occupational, Safety & Health Administration. In addition thereto, at that time and place, the defendant, individually and through agents, servants and employees, had the authority to stop the work, refuse the work and materials and order changes in the work, in the event the work was being performed in a dangerous manner or for any other reason. Furthermore, at that time and place, the defendant, individually and through agents, servants and employees, had supervision and control of the work, retention of the right to supervise and control the work, constant participation in ongoing activities at the construction site, supervision and coordination of subcontractors, responsibility for taking safety precautions at the job site, authority to issue change orders, the right to stop work,

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HARMAN FREDICK & O'CONNOR

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ownership of the equipment at the job site, familiarity with construction customs and practices and had been in a position to assure worker safety or alleviate equipment deficiencies or improper work habits

5. That at the aforesaid time and place, and prior thereto, the defendant, individually and through agents, servants and employees, erected, constructed, placed or operated, or caused to be erected, constructed, placed or operated, a certain orchestra pit or hole in the stage floor, to facilitate and be used in the aforesaid erection, construction, repairs, alteration, removal, and/or painting.

6. That at all times herein relevant, the defendant, PASCHEN, had a duty to exercise reasonable care for the safety of workers lawfully upon the premises.

7. That notwithstanding said duty, the defendant, PASCHEN, was then and there guilty of one or more of the following negligent acts or omissions:

Placed the opening/pit in the floor in a location which created a danger for persons in the area;

(b) Failed to warn of the placement of opening/pit in the floor in a location which created a danger for persons in the area;

(c) Failed to erect warning signs, barricades, or block off said area;

Failed to barricade or cover the opening/pit in the floor when they knew individuals were working and/or walking in that area;

Failed to provide a barricade or cover or other device to prevent people from falling into the pit;

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HARMAN FEDICK & O'CONNOR

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(f) Failed to take adequate measures to prevent people from falling into the pit;

Failed to adequately train employees to correct, maintain, prevent the aforementioned;

(h) Failed to have an adequate policy to correct, maintain, prevent the aforementioned.

Failed to provide the Plaintiff with a safe work area.

Failed to make a reasonable inspection of the premises

8. That at said time and place and as a result of the aforementioned, plaintiff, MICHAEL MADDEN, was injured when he fell into the orchestra pit and/or hole in the floor

9 That as a proximate result of the conduct of the defendant, PASCHEN, as aforesaid, the plaintiff, MICHAEL MADDEN, was thereby injured internally, externally and otherwise, both temporarily and permanently; and plaintiff thereby became sick, sore, lame, diseased and disordered and so remained for a long time, to wit: from thence hitherto, during all of which time he suffered or will suffer great pain and was hindered and prevented from attending to his business and affairs, and thereby sustained the loss of divers earnings, gains or profits; and plaintiff was or will be thereby compelled to pay out, expend and become liable for divers large sums of money in and about endeavoring to be cured of his injuries, as aforesaid

WHEREFORE, the plaintiff, MICHAEL MADDEN, prays for judgment against the defendant, PASCHEN, in a sum in excess of Fifty Thousand Dollars (\$50,000.00) plus the cost of this action

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COUNT II

LOSS OF CONSORTIUM- F.H. PASCHEN, S.N. NIELSON, INC.

NOW COMES the plaintiff, JEAN MADDEN by and through attorneys, HARMAN, FEDICK & O'CONNOR, LTD., and in complaining against the defendant, F.H. PASCHEN, S.N. NIELSON, INC., states as follows:

That the plaintiff JEAN MADDEN, realleges incorporates paragraphs 1 through 9 of Count I as and for paragraphs 1 through 9 in Count II

10. That the plaintiff, JEAN MADDEN, is the wife of MICHAEL MADDEN, and as a result of the injuries to MICHAEL MADDEN, the plaintiff, JEAN MADDEN, was deprived of his services, society, affection and consortium.

WHEREFORE, the plaintiff, JEAN MADDEN, prays for judgment against the defendant, F.H. PASCHEN, S.N. NIELSON, INC., in an amount within the jurisdiction of the Circuit Court of Cook County, Illinois

COUNT III

NEGLIGENCE- JACOBS FACILITIES

NOW COMES the plaintiff, MICHAEL MADDEN, by his attorneys HARMAN, FEDICK & O'CONNOR, LTD., and complaining of the defendant JACOBS FACILITIES, INC., alleges as follows:

That on or about and before August 19, 2002, the defendant, JACOBS FACILITIES, INC., who individually and by and through agents, servants and employees, owned and/or was in charge of the erection, construction, repairs, alteration, removal, and/or

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HARMAN FEDICK & O'CONNOR

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painting of a certain orchestra pit and/or hole in the stage located at the aforementioned location.

2. That on or about and before August 19, 2002, the defendant, JACOBS FACILITIES, INC., served as the project manager and/or construction manager for the work at and near the orchestra pit and/or hole in the stage located at the aforementioned location

3. That on or about August 19, 2002, plaintiff, MICHAEL MADDEN, was an employee of Amos Alonzo Stagg High School District 230 and was engaged in the performance of his duties at or near a portion of the aforementioned certain orchestra pit and/or hole.

4. That at the aforementioned time and place, there was in force and effect a contract between the defendant, JACOBS FACILITIES, INC. and Amos Alonzo Stagg High School District 230.

5. That at the aforesaid time and place and prior thereto, the defendant, individually and through his agents, servants and employees, was present during the course of such erection, construction, repairs, alteration, removal, and/or painting. Further, the defendant, individually and through agents, servants and employees, participated in coordinating the work being done and designated various work methods, maintained and check work progress and participated in the scheduling of the work and the inspection of the work, and were likewise responsible for the work being performed pursuant to Section 1926.16 of the Occupational, Safety & Health Administration. In addition thereto, at that time and place, the defendant, individually and through agents, servants and employees, had the authority to stop the work, refuse the work and

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materials and order changes in the work, in the event the work was being performed in a dangerous manner or for any other reason. Furthermore, at that time and place, the defendant, individually and through agents, servants and employees, had supervision and control of the work, retention of the right to supervise and control the work, constant participation in ongoing activities at the construction site, supervision and coordination of subcontractors, responsibility for taking safety precautions at the job site, authority to issue change orders, the right to stop work ownership of the equipment at the job site, familiarity with construction customs and practices and had been in a position to assure worker safety or alleviate equipment deficiencies or improper work habits

6 That at the aforesaid time and place, and prior thereto, the defendant, individually and through agents, servants and employees, erected, constructed, placed or operated, or caused to be erected, constructed, placed or operated, a certain orchestra pit or hole in the stage floor, to facilitate and be used in the aforesaid erection, construction, repairs, alteration, removal, and/or painting

7 That at all times herein relevant, the defendant, JACOBS FACILITIES, INC., had a duty to exercise reasonable care for the safety of workers lawfully upon the premises.

8. That notwithstanding said duty, the defendant, JACOBS FACILITIES, INC., was then and there guilty of one or more of the following negligent acts or omissions:

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HARMAN FREDICK & O'CONNOR

persons in the area;

- (a) Placed the opening/pit in the floor in a location which created a danger for persons in the area;
- (b) Failed to warn of the placement of opening/pit in the floor in a location which created a danger for persons in the area;
- (c) Failed to erect warning signs, barricades, or block off said area;
- (d) Failed to barricade or cover the opening/pit in the floor when they knew individuals were working and/or walking in that area;
- (e) Failed to provide a barricade or cover or other device to prevent people from falling into the pit;
- (f) Failed to take adequate measures to prevent people from falling into the pit;
- (g) Failed to adequately train employees to correct, maintain, prevent the aforementioned;
- (h) Failed to have an adequate policy to correct, maintain, prevent the aforementioned.
- (i) Failed to provide the Plaintiff with a safe work area.
- (j) Failed to make a reasonable inspection of premises.

9. That at said time and place and as a result of the aforementioned, plaintiff, MICHAEL MADDEN, was injured when he fell into the orchestra pit and/or hole in the floor

10. That as a proximate result of the conduct of the defendant, JACOBS FACILITIES, INC., as aforesaid, the plaintiff, MICHAEL MADDEN, was thereby injured internally, externally otherwise, both temporarily and permanently; and plaintiff thereby became sick, sore, lame, diseased and disordered and so remained for a long time, to wit: from thence hitherto, during all of which

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time he suffered or will suffer great pain and was hindered prevented from attending to his business and affairs, and thereby sustained the loss of divers earnings, gains or profits; plaintiff was or will be thereby compelled to pay out, expend become liable for divers large sums of money in and about endeavoring to be cured of his injuries, as aforesaid.

WHEREFORE, the plaintiff, MICHAEL MADDEN, prays for judgment against the defendant, JACOBS FACILITIES, INC., in a sum in excess of Fifty Thousand Dollars (\$50,000.00) plus the cost of action.

COUNT IV

LOSS OF CONSORTIUM- JACOBS FACILITIES, INC.

NOW COMES the plaintiff, JEAN MADDEN, by and through attorneys, HARMAN, FEDICK & O'CONNOR, LTD., and in complaining against the defendant, JACOBS FACILITIES, INC., states as follows:

1. That the plaintiff, JEAN MADDEN, realleges and incorporates paragraphs 1 through 10 of Count III as and for her paragraphs 1 through 10 in Count IV

11. That the plaintiff, JEAN MADDEN, is the wife of MICHAEL MADDEN, and as a result of the injuries to MICHAEL MADDEN, the plaintiff, JEAN MADDEN, was deprived of his services, society, affection and consortium.

WHEREFORE, the plaintiff, JEAN MADDEN, prays for judgment against the defendant JACOBS FACILITIES, INC., in an amount within the jurisdiction of the Circuit Court of Cook County, Illinois

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COUNT V

NEGLIGENCE- CLIFFS AND CABLES, LLC.

NOW COMES the plaintiff, MICHAEL MADDEN, by his attorneys, HARMAN, FEDICK & O'CONNOR, LTD., and complaining of the defendant, CLIFFS AND CABLES, LLC., alleges as follows:

1. That on or about and before August 19, 2002, the defendant, CLIFFS AND CABLES, LLC., who individually and by and through agents, servants and employees, owned and/or was in charge of the erection, construction, repairs, alteration, removal, and/or painting of a certain orchestra pit and/or hole in the stage located at the aforementioned location
2. That on or about and before August 19, 2002, the defendant, CLIFFS & CABLES, LLC., served as a sub-contractor for the work at and near the orchestra pit and/or hole in the stage located at the aforementioned location
3. That on or about August 19, 2002, plaintiff, MICHAEL MADDEN, was an employee of Amos Alonzo Stagg High School District 230 and was engaged in the performance of his duties at or near a portion of the aforementioned certain orchestra pit and/or hole.
4. That at the aforementioned time and place, there was in force and affect a contract between the defendant, CLIFFS AND CABLES, LLC and Amos Alonzo Stagg High School District 230
5. That at the aforesaid time and place and prior thereto, the defendant, individually and through his agents, servants and employees, was present during the course of such erection

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construction, repairs, alteration, removal, and/or painting. Further, the defendant, individually and through agents, servants and employees, participated in coordinating the work being done and designated various work methods, maintained and check work progress and participated in the scheduling of the work and the inspection of the work, and were likewise responsible for the work being performed pursuant to Section 1926.16 of the Occupational, Safety & Health Administration. In addition thereto, at that time and place, the defendant, individually and through agents, servants and employees, had the authority to stop the work, refuse the work and materials and order changes in the work, in the event the work was being performed in a dangerous manner or for any other reason. Furthermore, at that time and place, the defendant, individually and through agents, servants and employees, had supervision and control of the work, retention of the right to supervise and control the work, constant participation in ongoing activities at the construction site, supervision and coordination of subcontractors, responsibility for taking safety precautions at the job site, authority to issue change orders, the right to stop work, ownership of the equipment at the job site, familiarity with construction customs and practices and had been in a position to assure worker safety or alleviate equipment deficiencies or improper work habits.

6. That at the aforesaid time and place, and prior thereto, the defendant, individually and through agents, servants

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employees, erected, constructed, placed or operated, or caused to be erected, constructed, placed or operated, a certain orchestra pit or hole in the stage floor, to facilitate and be used in the aforesaid erection, construction, repairs, alteration, removal, and/or painting.

7 That at all times herein relevant, the defendant, CLIFFS AND CABLES, LLC., had a duty to exercise reasonable care for the safety of workers lawfully upon the premises.

8. That notwithstanding said duty, the defendant, CLIFFS AND CABLES, LLC., was then and there guilty of one or more of the following negligent acts or omissions:

- (a) Placed the opening/pit in the floor in a location which created a danger for persons in the area;
- (b) Failed to warn of the placement of opening/pit in the floor in a location which created a danger for persons in the area;
- (c) Failed to erect warning signs, barricades, or block off said area;
- (d) Failed to warn of the opening/pit in the floor;
- (e) Failed to barricade or cover the opening/pit in the floor when they knew individuals were working and/or walking in that area;
- (f) Failed to provide a barricade or cover or other device to prevent people from falling into the pit;
- (g) Failed to take adequate measures to prevent people from falling into the pit;
- (h) Failed to adequately train employees to correct, maintain, prevent the aforementioned;
- i Failed to have an adequate policy to correct, maintain, prevent the aforementioned.

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COUNT VI

LOSS OF CONSORTIUM- CLIFFS & GABLES, LLC

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